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MICHAEL RODAK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1069

ASSOCIATED ENTERPRISES, INC., and
JOHNSTON FUEL LINERS,
Appellants,

vs.

TOLTEC WATERSHED IMPROVEMENT DISTRICT,
Appellee.

APPEAL FROM THE SUPREME COURT OF WYOMING

MOTION TO AFFIRM

FRED W. PHIFER
Member of the Bar of the
Supreme Court of the
United States
P. O. Box 180
Wheatland, Wyoming 82201
307-322-3617
Counsel for Appellee

BRADFORD PRINTING, DENVER

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 16 of the Rules of the Supreme Court of the United States, Appellee moves to affirm the judgment in the above entitled action on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

This Court held in *Gordan v. Lance*, 91 S.Ct. 1889 at page 1891:

> "We conclude that the West Virginia Court's reliance on the Gray and Cipriano cases was misplaced. The defect this court found in those cases lay in the denial or dilution of voting power because of group

characteristics—geographic location and property ownership—that bore no valid relation to the interest of those groups in the subject matter of the election;"

The Wyoming Watershed Improvement District statutes as quoted by the Appellant in his Jurisdictional Statement limit the right to vote in all watershed referendums and elections to land owners. The referendum required for the formation of the watershed improvement district must pass by a majority of the votes, which affirmative votes represent a majority of the acreage contained in the district. The referendum required before bonds can be issued requires a two-thirds vote of the land owners which votes must represent a majority of the acreage contained in the district.

These restrictions bear a valid relation to the interest of those groups in the subject matter of the election. The land owners are the only ones who directly benefit and they are the only ones who pay. The acreage requirements merely insure that a group of numerically superior small land owners can not force a minority of large land owners into a watershed district with its attendant heavy economic burdens.

This Court held in *Vermillion Parish Police Jury v. Hebert,* Case No. 70-164 as reported in 40 Law Week at page 3143, that provisions of the Louisiana constitution and statutes requiring ownership of property and payment of taxes thereon as a condition precedent to voting are constitutional as applied to local road district-bond authorization elections and the judgment of the Louisiana Supreme Court was reversed.

Thus the equal protection clause is limited to elections of general public concern and it does not apply to local

single purpose districts whose nature is primarily proprietary rather than governmental.

Respectfully submitted,

FRED W. PHIFER
Member of the Bar of the
Supreme Court of the United
States
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of May, 1972, three copies of the Appellee's Motion to Affirm were served by mailing, first class postage prepaid, under Rule 33(1), to Ellsworth E. Lonabaugh, Attorney at Law, P. O. Box 728, Sheridan, Wyoming 82801 and Henry A. Burgess, Attorney at Law, P. O. Box 728, Sheridan, Wyoming 82801. I further certify that all parties required to be served have been served.

FRED W. PHIFER
Member of the Bar of the
Supreme Court of the
United States
P. O. Box 180
Wheatland, Wyoming 82201
307-322-3617
Attorney for Appellee